

SUPERIOR COURT
BARNSTABLE, SS

Filed

FEB 5 2019

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS Clerk
Sally W. Hester

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 1572-CV-00335

CHRISTOPHER KANAGA and
LARAJA AND KANAGA, P.C.,

Plaintiffs,

v.

SHELDON MANUEL,

Defendant.

**PLAINTIFFS' REPLY BRIEF IN SUPPORT OF THEIR MOTION *IN LIMINE* TO
ADMIT THE JUNE 4, 2015 FACEBOOK POSTING AS PROPERLY
AUTHENTICATED AND ADMISSIBLE UNDER THE OPERATIVE WORDS
DOCTRINE**

Defendant Manuel's untimely opposition to Plaintiffs' motion in limine to admit the June 4, 2015 Facebook Posting As Properly Authenticated And Admissible Under the Operative Words Doctrine reflects, at best, an egregious waste of this Court's time and, at worst, outright game-playing concerning an exhibit that she has already agreed days ago is an uncontested trial exhibit.

As a threshold matter, Manuel, on January 28, 2019, agreed that the Facebook Posting was an agreed-upon/uncontested trial exhibit. Specifically, on January 24, 2019, Plaintiffs sent Manuel's counsel a Proposed Joint Trial Exhibit List along with electronic copies of the documents corresponding to the trial exhibit list via an email asking him to either consent or object to the specific trial exhibits

Mr. Pudlo,

Shortly you will receive a SecureMessage containing the proposed Joint Trial Exhibit list in the above captioned matter, along with PDF copies of

the exhibits. Pursuant to the Court's pre-trial Order, the parties are to provide the Court with a joint agreed-upon list of exhibits. Consequently, by next Tuesday January 29, please respond with your consent to the specific exhibits. If you object to an exhibit, please state the basis for your basis for objection. In addition, please provide us with Defendant's list of proposed exhibits. Plaintiffs reserve the right to amend or supplement the exhibit list depending on defendant's proposed exhibits. Thank you.

Exhibit A – Korbass email along with Exhibit List (emphasis added).

Not surprisingly, Manuel's Facebook Post, which is at the heart of this case, was proposed trial exhibit #1. Id. On January 28, 2019, Manuel's counsel provided his objections and positions on Plaintiffs' proposed trial exhibits. He tellingly did not object in any way to the Facebook post. Exhibit B. That very day, Plaintiffs' counsel sent an email to Manuel's counsel at 2:53pm, to confirm his position:

Regarding the exhibits, I assume that the exhibits to which you have not objected to, we have agreement that they are "agreed-upon exhibits." Please confirm so that I can put together the court-ordered agreed-upon exhibit list. I will review your proposed exhibits later tonight and provide you with our position.

Exhibit B (emphasis added). Manuel's counsel then responded, affirming:

Yes, if no objection, then agreed upon.

Bill

Id. (emphasis added). As a result, the Facebook Posting is already an agreed-upon trial exhibit.

Not only is Manuel's opposition brief outrageous given that she agreed days earlier that the Facebook Post is an uncontested trial exhibit, but also because it is untimely and violates the letter and spirit of this Court's pre-trial orders. On February 23, 2018, the Court ordered the case to trial beginning on August 6, 2018. The trial was then continued and re-scheduled for February 11, 2019. In connection with the revised Final Pre-Trial Order dated September 13, 2018, Superior Court Rule 6, and Superior Court Standing Order 1-88, the parties were ordered to file no later than 5 business days before trial, among other things, all motions in limine, oppositions

thereto, and reply briefs in compliance with Superior Court Rule 9A. To ensure that Defendant had sufficient time to oppose Plaintiffs' motions in limine and to ensure that Plaintiffs had sufficient time to prepare any necessary reply briefs, Plaintiffs served their motions in limine on January 3, 2019 - - over a month before trial. The deadline for responding to these motions were January 17, 2019.

Despite Defendants' counsel communicating with Plaintiffs' counsel on numerous matters in the weeks before the deadline, counsel never requested an extension or accommodation until the week before trial. In preparing for trial and assisting the Court efficiently address pre-trial issues, Plaintiffs are entitled to rely on, and expect that Manuel will be held to, the Court's rules and orders. Manuel's disregard of the rules and her agreement regarding the trial exhibits should not be tolerated. The Court should simply admit the Facebook Post as an uncontested trial exhibit, as Manuel has agreed.

Finally, even if the Court is inclined to consider Manuel's late opposition brief, she provides no support legally or factually preventing the admissibility of the Facebook Post. Rather, she ignores the plethora of evidence authenticating the post as belonging to Manuel to contend: "Basically, the Defendant (sic) relies upon the documents received from Facebook pursuant to an Order of this Court." (Opp. at p.1). While the Plaintiffs certainly rely, in part, on Facebook's business record authenticating the Facebook account as belonging to Manuel, the Plaintiffs also rely on extensive additional evidence, including:

- Manuel's numerous admissions in her sworn interrogatory answers and deposition testimony that the Facebook Post was made by her.¹
- the picture of Manuel and her former husband used by Manuel on her Facebook account, further authenticating it as belonging to her. See Gilman, 89 Mass. App.

¹ See Manuel's Answers to Plaintiffs' First Set of Interrogatories dated April 25, 2016 at Nos. 1-3, 15, 18, 28 and Manuel Dep. Tr. (May 3, 2017) at p. 70, Manuel Dep. Tr. (Aug. 23, 2016) at pp. 5, 7-8, 11-14, 18, 46-51.

Ct. at 759 (confirming circumstances included that "messages originated from an account bearing the defendant's name on which his picture appeared").

The role of the trial judge in jury cases is to determine whether there is evidence sufficient, if believed, to convince the jury by a preponderance of the evidence that the item in question is what the proponent claims it to be. If so, the evidence should be admitted, if it is otherwise admissible." Purdy, 459 Mass. at 447. When it comes to electronic evidence, "the judge [is] required to determine whether the evidence [is] sufficient for a reasonable jury to find that the defendant authored the emails." Id.; Commonwealth v. Oppenheim, 86 Mass. App. Ct. 359, 366-367 (2014) (affirming the admission of instant messages where sufficient "evidence that the defendant authored the communication"). Here, the evidence, including Manuel's own admissions, establish the authenticity of the Facebook Post.

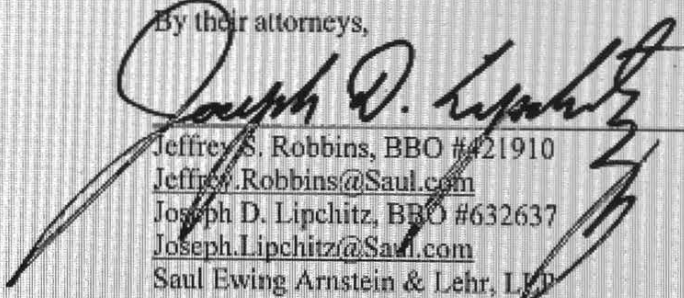
Moreover, Manuel ignores the controlling case law concerning the operative words doctrine and puzzlingly "urges this Court to apply the customary hearsay rules." The Operative Words Doctrine is part and parcel of the well-established hearsay rules. Indeed, Plaintiffs are not seeking the June 4th Facebook Posting to prove the truth of the matters asserted; that they attempted to bribe judges, lawyers and members of law enforcement. Rather, Defendant's statements themselves constitute the tort of defamation, and are admissible under the Operative Words Doctrine. See Brodin & Avery, Handbook of Massachusetts Evidence, at §8.2.5 (2018) ("Some extrajudicial statements are equivalent to actions and have independent legal significance. For example, given words may constitute a contract, tort, or crime. Such words are admissible under the operative words doctrine. For example, defamatory statements...are admissible") (emphasis added); 14 B Mass. Practice, Summary of Basic Law, §9:158 (2018) ("when words spoken outside of court themselves form the basis of a cause of action or defense, they are admissible as nonhearsay "operative facts." Such statements are not offered for the truth

of the matter asserted but to prove that the statements were made, giving rise to legal rights and duties. Examples of statements constituting "operative facts" are those which make up . . . a slander or libel."); Robinson v. Van Auken, 190 Mass. 161 (1906) (in slander action, statements that defendant called plaintiff a thief in presence of policeman, and again at the police station were admissible). See also Commonwealth v. Morse, 468 Mass. 360, 375, n.20 (2014) ("It is well established, however, that "operative words" bearing independent legal significance . . . are not hearsay").

As a result, whether by Manuel's express agreement, her failure to oppose Plaintiffs' motion in limine in a timely manner, or the overwhelming evidence (including Manuel's own admissions) of the authenticity of the Facebook Post, the June 4th Facebook Post, without question, should be admitted into evidence as trial exhibit number 1.

CHRISTOPHER W. KANAGA AND
LARAJA & KANAGA, P.C.,

By their attorneys,


Jeffrey S. Robbins, BBO #421910

Jeffrey.Robbins@Saul.com

Joseph D. Lipchitz, BBO #632637

Joseph.Lipchitz@Saul.com

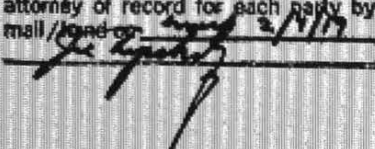
Saul Ewing Arnstein & Lehr, LLP

131 Dartmouth, Suite 501

Boston, MA 02116

(617) 722-3300

Dated: February 4, 2019

I hereby certify that a true copy of the
above document was served upon the
attorney of record for each party by
mail / hand on 2/15/19


Korbas, Meaghan E.

From: Korbas, Meaghan E.
Sent: Thursday, January 24, 2019 5:10 PM
To: 'billsbriefs@msn.com'
Cc: Lipchitz, Joseph D.
Subject: Christopher Kanaga et al. v. Sheldon Manuel

Mr. Pudlo,

Shortly you will receive a SecureMessage containing the proposed Joint Trial Exhibit list in the above captioned matter, along with PDF copies of the exhibits. Pursuant to the Court's pre-trial Order, the parties are to provide the Court with a joint agreed-upon list of exhibits. Consequently, by next Tuesday January 29, please respond with your consent to the specific exhibits. If you object to an exhibit, please state the basis for your basis for objection. In addition, please provide us with Defendant's list of proposed exhibits. Plaintiffs reserve the right to amend or supplement the exhibit list depending on defendant's proposed exhibits. Thank you.

Please note that we have not included trial exhibits 18 or 27 as we currently do have them in electronic form. We will send those as soon as we obtain them.

Best,
Meaghan

**SAUL EWING
ARNSTEIN
& LEHR^{LLP}**

Meaghan Korbas | Paralegal
SAUL EWING ARNSTEIN & LEHR LLP
131 Dartmouth Street, Suite 501 | Boston, MA 02116
Tel: 617.912.0953 | Fax: 857.400.3776
meaghan.korbas@saul.com | www.saul.com

- Compose Delivery
- Inbox
- Sent Items
- Workspaces
- Help

Delivery Details

All delivery information

Delivery Information		Action
Package name	Christopher Kanaga et al. v. Sheldon Manual	
To	William Rudin; joseph.fpchita@saul.com	
Subject	Christopher Kanaga et al. v. Sheldon Manual	

Last updated 01/24/2019 05:10 PM by Meghan Korbas	
Secure message	Please find attached the proposed trial exhibit list and corresponding exhibits.
	Post, Meghan
Email notification message	[no message]

Files		
File name	Date created	Size
 Kanaga Trial Exhibits.zip	01/24/2019 05:10 PM	31.9 MB

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 1572-00335

CHRISTOPHER KANAGA and
LARAJA & KANAGA, P.C.,
Plaintiffs,

v.

SHELDON MANUEL,
Defendant.

JOINT TRIAL EXHIBIT LIST

Plaintiffs' Exhibits

1. Facebook Post by Sheldon Manuel dated June 2, 2015 (8/23/16 Manuel Depo Exhibit 1)
2. Sheldon Manuel LinkedIn Page (8/23/16 Manuel Depo Exhibit 2)
3. Email from David Manuel to Sheldon Manuel dated May 9, 2013 (8/23/16 Manuel Depo Exhibit 4)
4. Hull Police Department Voluntary Statement dated August 27, 2011 (8/23/16 Manuel Depo Exhibit 3)
5. Email from Sheldon Manuel to Carrie Buddington dated January 1, 2016 (8/23/16 Manuel Depo Exhibit 7)
6. Email from Sheldon Manuel to Carrie Buddington dated January 1, 2016 with draft affidavit of Carrie Buddington (8/23/16 Manuel Depo Exhibit 7)
7. Handwritten Request for Injunction (8/23/16 Manuel Depo Exhibit 9)
8. Handwritten Fax to the attention of Duty Agent (8/23/16 Manuel Depo Exhibit 11)
9. Fax from Sheldon Manuel to Jeffrey Robbins (8/23/16 Manuel Depo Exhibit 12)
10. Email from Sheldon Manuel to her counsel dated April 30, 2014 (8/23/16 Manuel Depo Exhibit 13)

11. Email from Sheldon Manuel (8/23/16 Manuel Depo Exhibit 14)
12. Fax dated August 4, 2015 to Court requesting investigation (8/23/16 Manuel Depo Exhibit 15)
13. Report on Con Artist Activity (8/23/16 Manuel Depo Exhibit 16)
14. Awakening Unlimited Web Publishing (8/23/16 Manuel Depo Exhibit 17)
15. Artist Trove Website Publishing – Sheldon Manuel (8/23/16 Manuel Depo Exhibit 18)
16. IRS Form 990 Return of Organization Exempt from Income Tax 2013 (8/23/16 Manuel Depo Exhibit 19)
17. Facebook Certificate of Authenticity of Domestic Records of Regularity Conducted Activity
18. Photograph of Christopher Kanaga
19. Judge Ryley Second Amended Judgment of Dismissal Commonwealth of Massachusetts Barnstable District Probate and Family Court Action Sheldon Manuel v. Daniel Ford
20. Judge Ryley Order for Commonwealth of Massachusetts Barnstable District Probate and Family Court Action Sheldon Manuel v. Daniel Ford Dated April 27, 2017
21. Email from Sheldon Manuel to Carrie Buddington dated January 1, 2015 (9/8/2015 Carrie Buddington Deposition Exhibit 1 Excerpt)
22. Draft Affidavit of Carrie Buddington
23. Judge Ryley Order for Commonwealth of Massachusetts Barnstable District Probate and Family Court Action Sheldon Manuel v. Daniel Ford dated February 29, 2016
24. Judge Menno Order for Commonwealth of Massachusetts Norfolk District Probate and Family Court Action In Re: Estate of David Manuel dated January 6, 2017
25. Judge Menno Order regarding January 5, 2017 Hearing for Commonwealth of Massachusetts Norfolk District Probate and Family Court Action In Re: Estate of David Manuel dated January 6, 2017
26. Oklahoma Court Filings
 - a. Sheldon Manuel Pauper Affidavit dated February 16, 2017
 - b. Sheldon Manuel Motion to Vacate dated February 16, 2017

- c. Motion to Continue the Protective Order Hearing and Obtain a Pass for Medical Illness Reasons dated February 17, 2017
- d. Motion to Extend Protective Order for Mrs. Sheldon Elizabeth Manuel dated February 17, 2017
- e. Letter from John Hopkins Dr. Sacks regarding Sheldon Manuel dated February 23, 2017
- f. Sheldon Manuel Affidavit of Opposition to Order of Judgment Debtor to Appear at Court dated February 27, 2017
- g. Motion for Continuance and Pass from Order of Judgment Debtor to Appear at Court dated February 27, 2017
- h. Sheldon Manuel Affidavit of Opposition to Order of Judgment Debtor to Appear at Court dated February 28, 2017
- i. Emergency Order of Protection dated March 2, 2017
- j. Sheldon Manuel Motion for Protection Order dated March 2, 2017
- k. Sheldon Manuel Affidavit Verifying all Exhibits are True Exact Copies of Originals dated March 2, 2017
- l. Sheldon Manuel Affidavit Medical Impossibility to Appear March 9, 2017 dated March 3, 2017
- m. Sheldon Manuel Affidavit Medical Impossibility to Appear March 9, 2017 dated March 3, 2017 – Filed Copy
- n. Letters Filed with Court dated March 3, 2017
- o. Notarized Copies of Exhibits filed with Court dated March 3, 2017
- p. Christopher Kanaga's Response to Defendant's Motion to Vacate dated March 6, 2017
- q. Sheldon Manuel Motion to Dismiss Court Order for Judgment Debtor to Attend March 9-17 Hearing dated March 6, 2017 – Unsigned Copy
- r. Sheldon Manuel Motion to Dismiss Court Order for Judgment Debtor to Attend March 9-17 Hearing dated March 6, 2017 – Executed Copy with Exhibits
- s. Sheldon Manuel Motion to Include Exhibit in Previous Motion "Dismiss Order for "J"ged Debtor" Appear in Assets Hearing" (sic) and to be Included in

"Motion to Vacate" dated March 8, 2017

- t. Order On the Defendant's Motion to Vacate dated March 7, 2017
- u. Sheldon Manuel Affidavit of Proof Against Plaintiff's Mis-Use of Isolated Portions of Depositions, Police Reports, and Marital Status of Defendant dated March 7, 2017
- v. Sheldon Manuel Withdrawal of Motion to Dismiss dated March 24, 2017
- w. Sheldon Manuel Motion to Stay Enforcement of Judgment dated April 6, 2017
- x. Sheldon Manuel Withdrawal of Motion to Stay dated April 20, 2017
- y. Docket Report for Oklahoma Action Sheldon Kanaga v. Sheldon Manuel

27. Fox News Article

Korbas, Meaghan E.

From: Lipchitz, Joseph D.
Sent: Saturday, February 02, 2019 4:37 PM
To: Korbas, Meaghan E.
Subject: FW: Kanaga v. Manuel

**SAUL EWING
ARNSTEIN
& LEHR^{LLP}**

Joseph D. Lipchitz | Partner
SAUL EWING ARNSTEIN & LEHR LLP
131 Dartmouth Street, Suite 501 | Boston, MA 02116
Tel: 617.912.0916 | Fax: 857.400.3776
Joseph.lipchitz@saul.com | www.saul.com

From: William Pudlo [<mailto:billsbriefts@msn.com>]
Sent: Monday, January 28, 2019 3:03 PM
To: Lipchitz, Joseph D.
Subject: Re: Kanaga v. Manuel

Joe,

Yes, if no objection, then agreed upon.

Bill

From: Lipchitz, Joseph D. <joseph.lipchitz@saul.com>
Sent: Monday, January 28, 2019 2:53 PM
To: 'William Pudlo'
Cc: Lipchitz, Joseph D.
Subject: RE: Kanaga v. Manuel

Bill,

The transcripts were sent by overnight mail, so you should have them. Regarding the exhibits, I assume that the exhibits to which you have not objected to, we have agreement that they are "agreed-upon exhibits." Please confirm so that I can put together the court-ordered agreed-upon exhibit list. I will review your proposed exhibits later tonight and provide you with our position.

--Joe

**SAUL EWING
ARNSTEIN
& LEHR^{LLP}**

Joseph D. Lipchitz | Partner
SAUL EWING ARNSTEIN & LEHR LLP
131 Dartmouth Street, Suite 501 | Boston, MA 02116
Tel: 617.912.0916 | Fax: 857.400.3776

Joseph.Lipchitz@saul.com | www.saul.com

From: William Pudlo [mailto:Billspudlo@msn.com]

Sent: Monday, January 28, 2019 2:37 PM

To: Lipchitz, Joseph D.

Subject: Kanaga v. Manuel

****EXTERNAL EMAIL**** - This message originates from outside our Firm. Please consider carefully before responding or clicking links/attachments.

Joe,

Attached is my Exhibit List and Objections to the Plaintiffs' Exhibits. Further I have attached copies of the documents, which may come in more than one email.

As of this morning I have not received the deposition transcripts you said were over-nighted last week. I trust you will extend the necessary additional time to respond.

I will be filing a Motion for late Filed Opposition to your Motions in Limine as well as my own Motions in Limine over the next few days.

Regards,

Bill Pudlo

"Saul Ewing Arnstein & Lehr LLP (saul.com)" has made the following annotations:

~~~~~  
This e-mail may contain privileged, confidential, copyrighted, or other legally protected information. If you are not the intended recipient (even if the e-mail address is yours), you may not use, copy, or retransmit it. If you have received this by mistake please notify us by return e-mail, then delete.  
~~~~~